

James H. Weingarten, DC Bar No. 985070
Peggy Bayer Femenella, DC Bar No. 472770
James Abell, DC Bar No. 990773
Cem Akleman, FL Bar No. 107666
Jennifer Fleury, NY Bar No. 5053178
Meredith R. Levert, DC Bar No. 498245
James Gossmann, DC Bar No. 1048904
Amanda L. Butler, IL Bar No. 6299218
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3570

*jweingarten@ftc.gov; pbayer@ftc.gov;
jabell@ftc.gov; cakleman@ftc.gov;
jfleury@ftc.gov; mlevert@ftc.gov;
jgossmann@ftc.gov; abutler2@ftc.gov*

Erika Wodinsky, Cal. Bar No. 091700
90 7th Street, Suite 14-300
San Francisco, CA 94103
Tel: (415) 848-5190

ewodinsky@ftc.gov

[Additional counsel identified on signature page in accordance with Local Rule 3-4(a)(1)]

Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880-JSC

**PLAINTIFF FEDERAL TRADE
COMMISSION'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED**

Dept.: Courtroom 8
Judge: Honorable Jacqueline Scott Corley

PLAINTIFF FEDERAL TRADE COMMISSION'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL SHOULD BE SEALED
CASE NO. 3:23-CV-2880-JSC

Pursuant to Civil Local Rules 7-11 and 79-5(f), Plaintiff, the Federal Trade Commission, respectfully submits this Administrative Motion to Consider Whether Another Party's Material Should be Sealed in connection with Plaintiff's Fourth Supplement to its Exhibit List.

Certain portions of Plaintiff's Fourth Supplement to its Exhibit List contain information that was obtained during the course of litigation discovery in *In the matter of Microsoft Corp. and Activision, Blizzard, Inc.*, before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9412, and that the producing party designated as Confidential pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022 ("Administrative Protective Order"). As detailed below, Plaintiff reasonably expects the producing party may file, confidentiality declarations in support of sealing as required by Local Rule 79-5. Accordingly, Plaintiff seeks to file under seal:

PX#	Description	Docket Entry
PX1151	Document Description	held for L.R. 79-5(f) declaration
PX1190	Document Description	held for L.R. 79-5(f) declaration
PX1214	Document Description	held for L.R. 79-5(f) declaration
PX3218	Document Description	held for L.R. 79-5(f) declaration
PX3225	Document Description	held for L.R. 79-5(f) declaration
PX3233	Document Description	held for L.R. 79-5(f) declaration
PX3234	Document Description	held for L.R. 79-5(f) declaration
PX4031	Document Description	held for L.R. 79-5(f) declaration
PX4209	Document Description	held for L.R. 79-5(f) declaration
PX4380	Document Description	held for L.R. 79-5(f) declaration
PX4472	Document Description	held for L.R. 79-5(f) declaration

Materials and documents may be provisionally filed under seal pursuant to Civil Local Rule 79-5(f) when the document, or portions thereof, "has been designated as confidential by another party or non-party." L.R. 79-5(f).

Plaintiff has redacted the above-referenced yellow-highlighted portions of the FTC Exhibit List because Microsoft Corporation ("Microsoft") and Activision Blizzard Inc. ("Activision") have not yet had the opportunity to designate the information contained therein as confidential pursuant to L.R. 79-5(f), and to provide Microsoft and Activision an opportunity

to designate the information contained therein as confidential pursuant to L.R. 79-5(f). *See* Activision’s (1) Fourth Amended Administrative Motion Seeking *In Camera* Treatment of Certain Exhibits Pursuant to Civil L.R. 7-11 and 79-5; and (2) Declaration of Page Robinson In Support Thereof (Dkt. No. 230); Microsoft’s Administrative Motion Seeking *In Camera* Treatment of Certain Exhibits Pursuant to Civil L.R. 7-11 and 79-5 (Dkt. No. 232); Activision’s Fifth Administrative Motion Seeking *In Camera* Treatment of Certain Exhibits Pursuant to Civil L.R. 7-11 and 79-5 (248) *see also* Omnibus Administrative Motion Regarding *In Camera* Treatment of Certain Exhibits Pursuant to Civil L.R. 7-11 and 79-5 (Dkt. No. 233).

Plaintiff has redacted the above-referenced pink-highlighted portions of the FTC Exhibit List because Nintendo of America Inc. (“Nintendo”) has not yet had the opportunity to designate the information contained therein as confidential pursuant to L.R. 79-5(f). *See* Non-Party Nintendo of America Inc. Statement Pursuant to Local Rule 79-5 As To Why Its Confidential Information Should Be Filed Under Seal (Dkt. No. 168); Non-Party Nintendo of America Inc. Statement Pursuant to Local Rule 79-5 As To Why PX7059 and PX7065 Should Remain Under Seal (Dkt. No. 219); Non-Party Nintendo of America Inc. Statement Pursuant to Local Rule 79-5 As To Why Any Portions of Videorecorded Testimony from PX7065 Should be Kept Under Seal and *In Camera* (Dkt. No. 220); Non-Party Nintendo of America Inc. Statement Pursuant to Local Rule 79-5 As To Why PX3224 Should Remain Under Seal (Dkt. No. 221); *see also* Non-Party Nintendo of America Inc. Unopposed Motion for Order Changing Time (Dkt. No. 136).

Plaintiff takes no position on the merits of sealing Microsoft’s, Activision’s, or Nintendo’s designated material.

In compliance with Civil Local Rule 79-5(d), the unredacted version of the FTC Exhibit List accompanies this Administrative Motion. In accordance with Local Rule 7-11, Plaintiff has also filed a Proposed Order herewith.

1 Dated: June 29, 2023

Respectfully submitted,

3 /s/ Jennifer Fleury

4 Jennifer Fleury
5 Peggy Bayer Femenella
6 James Abell
7 Cem Akleman
8 J. Alexander Ansaldo
9 Michael T. Blevins
10 Amanda L. Butler
11 Nicole Callan
12 Maria Cirincione
13 Kassandra DiPietro
14 Michael A. Franchak
15 James Gossmann
16 Ethan Gurwitz
17 Meredith R. Levert
18 David E. Morris
19 Merrick Pastore
20 Stephen Santulli
21 Edmund Saw
22 James H. Weingarten

23 Federal Trade Commission
24 600 Pennsylvania Avenue, NW
25 Washington, DC 20580
26 Tel: (202) 326-3570

27 Erika Wodinsky

28 Federal Trade Commission
90 7th Street, Suite 14-300
San Francisco, CA 94103

*Counsel for Plaintiff Federal Trade
Commission*